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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,495	03/30/2004	Aaron Chapman	1050/128	3236
2101	7590	06/28/2005		
BROMBERG & SUNSTEIN LLP 125 SUMMER STREET BOSTON, MA 02110-1618			EXAMINER MITCHELL, TEENA KAY	
			ART UNIT 3743	PAPER NUMBER

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/812,495	CHAPMAN ET AL.	
	Examiner Teena Mitchell	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 30 March 2004.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-20 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 30 March 2004 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/5/05.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_ .

## DETAILED ACTION

### ***Priority***

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in United Kingdom on 4/1/03. It is noted, however, that applicant has not filed a certified copy of the 0307556.1 application as required by 35 U.S.C. 119(b).

### ***Specification***

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or  
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

(I) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

**It is suggested that appropriate Headings be placed throughout the specification as outlined above.**

***Claim Rejections - 35 USC § 102***

**The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:**

**A person shall be entitled to a patent unless –**

**(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.**

**Claims 1, 7-9, 11, 13, 14, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Stinton (6,120,213).**

Stinton in a harness discloses at least one flexible panel (10), wherein the harness is arranged in use to be worn by a user of breathing apparatus and to adopt an operational configuration when so worn, and wherein the flexible panel is of material having resilient characteristics such that the harness at least partly retains its operational configuration whilst not in use (Col. 3, lines 19-22).

With respect to claim 7, Stinton discloses wherein the harness comprises at least one flexible panel, which is arranged in use to be worn on shoulder of a user (44).

With respect to claim 8, Stinton discloses wherein the harness comprises one or more securing straps (78a, 78b) and a belt portion (106, 104), arranged in use to be worn on the waist of a user.

With respect to claim 9, Stinton discloses a flexible mounting plate (16) for receiving a cylinder of breathing gas.

With respect to claim 11, Stinton discloses one or more recessed portions for receiving one or more components of breathing apparatus, such as a hose and/or a cylinder manifold ((Figs. 1-4).

With respect to claim 13, Stinton discloses wherein the harness comprises one or more flexible panels arranged in use respectively to pass over the shoulders of the wearer in the manner of a backpack or rucksack (Figs. 1-4).

With respect to claim 14, Stinton discloses at least one shoulder support panel and a belt portion (104, 106), the attachment means comprising mounting means arranged to engage realeasably a mounting portion of a cylinder , and retaining means arranged to retain a retaining device for the cylinder (Figs. 1-4), wherein use, a cylinder may be attached to the belt portion by both the mounting means and the retaining means or else by the retaining means alone (Figs. 1-4).

With respect to claim 17, Stinton discloses wherein the retaining means comprises one or more retaining straps and the retaining portion of the cylinder comprises a web, holster or cradle for holding the cylinder (Fig. 2).

#### ***Claim Rejections - 35 USC § 10***

**The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:**

**(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which**

said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 2-6, 10, 15, 16, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stinton (6,120,213).

The difference between Stinton and claim 2 is the flexible panel is of a composite material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a composite material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability

for the intended use as a matter of design consideration. *In re Leshin*, 227, F.2d 197, 125 USPQ 416.

With respect to claims 3-6, and 10, note rejection of claim 2 above.

**Claims 12 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stinton (6,120,213) in view of Johansson (5,394,870).**

The difference between Stinton and claim 12 is the harness being worn in the manner of a bandolier or sash. Johansson in a harness teaches a harness worn over the shoulder in the manner of a bandolier. It would have been obvious to one of ordinary skill in the art to wear the cylinder in a bandolier manner as such is well known as taught by Johansson.

With respect to claim 18, note rejection of claim 12 above.

***Claim Rejections - 35 USC § 102***

**The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:**

**A person shall be entitled to a patent unless –**

**(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.**

**Claims 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Johansson (5,394,870).**

Johansson in a breathing harness discloses a flexible hip-plate (35) and at least two connectors (50, 24) for connecting a cylinder containing a fluid for breathing thereto,

wherein a first connector is arranged for connecting a cylinder detachably, and a second connector is arranged for connecting the cylinder non-detachably.

***Claim Rejections - 35 USC § 103***

**The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:**

**(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.**

**Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johansson (5,394,870).**

The difference between Johansson and claim 20 is a connector for connecting the breathing apparatus to an additional fluid supply line. It would have been obvious to one of ordinary skill in the art at the time of the invention to have a connector for connecting the breathing apparatus to an additional fluid supply line, since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ8.

***Conclusion***

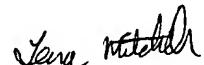
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of art is cited to show harness devices: 6,405,728; 6,354,295; 6,030,147; 6,003,744; 4,685,456.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena Mitchell whose telephone number is (571) 272-

4798. The examiner can normally be reached on Monday-Friday however the examiner is on a flexible schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Teena Mitchell  
Examiner  
Art Unit 3743  
June 26, 2005